

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MORGAN HOWARTH,	:	
	:	
Plaintiff,	:	
	:	<u>ORDER</u>
v.	:	
	:	21 CV 6962 (VB)
KEY WEST POOLSCAPES, LLC, and	:	
MICHAEL TIMOTHY CARROLL, JR.,	:	
Defendants.	:	
-----X	:	

Plaintiff commenced the instant action on August 18, 2021.

On October 20, 2021, plaintiff docketed an affidavit of service indicating service on “Key West Poolsapces, LLC, c/o Michael Timothy Carroll, Jr.” on September 13, 2021. (Doc. #10). Accordingly, defendant Key West Poolsapces, LLC (“Key West”) had until October 4, 2021, to respond to the complaint. See Fed. R. Civ. P. 12(a)(1)(A)(i).

As of October 29, 2021, neither defendant Key West nor defendant Michael Timothy Carroll, Jr. had answered, moved, or otherwise responded to the complaint. Accordingly, by Order dated October 29, 2021, the Court instructed that provided defendants remained in default, plaintiff was to seek a certificate of default by **November 12, 2021**, and thereafter to move, by order to show cause and in accordance with the Court’s Individual Practices, for default judgment against defendants by **November 29, 2021**. The Court warned in bold and underlined typeface that if plaintiff failed to satisfy either deadline, the Court may dismiss the case without prejudice for failure to prosecute or failure to comply with court orders. Fed. R. Civ. P. 41(b). (Doc. #11).

On November 5, 2021, plaintiff filed a proposed clerk’s certificate of default certifying both defendants had been served with summons and complaint and that neither had responded to the complaint. (Doc. #14). That same date, the Clerk marked this as a deficient entry, explaining

no proof of service had been filed on the docket for defendant Carroll and instructing plaintiff to refile the proposed clerk's certificate of default once proof of service on defendant Carroll had been filed.

To date, plaintiff has failed to file both (i) proof of service on defendant Carroll, and (ii) an updated proposed clerk's certificate of default.

Accordingly, pursuant to Fed. R. Civ. P. 4(m), this action will be dismissed without prejudice against defendant Carroll unless, on or before **December 10, 2021**, plaintiff either: (i) files to the ECF docket proof of service, indicating defendant Carroll was served on or before November 16, 2021; or (ii) shows good cause in writing for his failure to comply with Fed. R. Civ. P. 4(m).

The December 10, 2021, letter shall also address whether plaintiff still intends to seek a certificate of default with respect to defendant Key West, and thereafter move for default judgment against Key West. If plaintiff does not address its intentions with respect to defendant Key West, the Court will dismiss the case against defendant Key West without prejudice for failure to prosecute or failure to comply with court orders. Fed. R. Civ. P. 41(b).

Dated: December 3, 2021
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent L. Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge